Submitted Oct. 14. 188

12

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 157.

ALLISON NAILOR, PLAINTIFF IN ERROR,

vs.

VIOLET A. WILLIAMS, ADMINISTRATRIX OF WILLIAM H. WILLIAMS.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 3, 1883.

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1 *Writ of error.*

UNITED STATES OF AMERICA, *ss*:

The President of the United States to the Chief Justice and Justices of the Supreme Court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said court before you, between Allison Nailor, plaintiff, and Violet A. Williams, administratrix of William H. Williams, defendant, a manifest error hath happened to the great damage of the said Allison Nailor, as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable S. P. Chase, Chief Justice of the United States, this 15th day of May, in the year of our Lord 1867, and of the independence of the United States the 91st.

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit*:

To VIOLET A. WILLIAMS, adm'r'x of William H. Williams:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the District of Columbia, wherein Allison Nailor is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Carter, Chief Justice of the said Supreme Court of the District of Columbia.

D. K. CARTER,
Ch'f Justice.

Service of this citation is hereby acknowledged, Nov. 30, 1867.

JOS. H. BRADLEY,
For Williams.

2 *Clerk's certificate.—Record.*

In the Supreme Court of the District of Columbia.

ALISON NAYLOR
vs.
VIOLET A. WILLIAMS, adm'x of W. H. William, dec'd.

DISTRICT OF COLUMBIA, *to wit*:

As commanded by the foregoing writ of error, I, Return J. Meigs, clerk of the Supreme Court of the District of Columbia, do hereby certify and transmit to the Supreme Court of the the United States a true copy of the record and proceedings mentioned in said writ of error, with all things touching the same, which copy is hereto annexed.

In testimony whereof, I have caused the seal of the said Supreme Court of the District of Columbia to be hereinto affixed, at the city of Washington, the fourth day of June, 1866.

R. J. MEIGS, *Clerk.*

3 *Summons.*

ALISON NAILOR
vs.
VIOLET A. WILLIAMS, adm'x of W. H. Williams.

DISTRICT OF COLUMBIA, *to wit*:

The United States of America to the marshal of the District of Columbia, greeting:

We command you that you summon Violet A. Williams before the Circuit Court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the third Monday of October inst., to answer unto Alison Nailor in a plea of trespass on the case.

Hereof fail not at your peril, and have you then and there this writ.

Witness James Dunlop, esquire, Chief Justice of our said court, at the city of Washington, the 14th day of June, Anno Domini one thousand eight hundred and 58.

JNO. A. SMITH, *Clk.*

STONE.

Endorsement: Sum'd. Carlisle & Maury. W. Selden. marshall.

4 *Declaration.*

DISTRICT OF COLUMBIA, *Washington County, to wit:*

Violet A. Williams, administratrix of all and singular the goods, chattels, which were of William H. Williams, at the time of his death, who died intestate, late of the county aforesaid, was summoned to answer unto Allison Nailor in a plea of trespass on the case upon promises, etc. And thereupon said plaintiff, by William J. Stone, jr., his attorney, complains that whereas said William H. Williams, in his lifetime, viz, on the first day of January, in the year eighteen hundred and fifty-six, at the county aforesaid, was indebted to said plaintiff in the sum of eight thousand dollars for divers goods, wares, and merchandise, before that time sold and delivered by said plaintiff to said defendant, at his special instance and request, and in the further sum of eight thousand dollars for work and labor done and performed by said plaintiff for said William H. Williams in his lifetime, at his special instance and request, and in the further sum of eight thousand dollars for money by said William H. Williams in his lifetime had and received for the use of said plaintiff; and in the further sum of eight thousand dollars for money lent and advanced by said plaintiff to said William H. Williams in his lifetime, at his special instance and request; and in the further sum of eight thousand dollars for money paid, laid out, and expended by said plaintiff for the use of said William H. Williams in his lifetime, at his special instance and request. And being so indebted, said William H. Williams in his lifetime, afterwards, that is to say, in the day and year last aforesaid, at the county aforesaid, in consideration thereof, undertook, and then and there faithfully promised said plaintiff, to pay him the said several sums of money in this count mentioned, when he should be thereunto afterwards requested.

And whereas said William H. Williams in his lifetime, afterwards, that is to say, on the first day of January, in the year aforesaid, at the county aforesaid, accounted with said plaintiff of and concerning divers sums of money from him to the said plaintiff before that time due, owing then in arrear and unpaid, and upon such ac-
5 counting, he was then and there found in arrear, and indebted to the said plaintiff in the further sum of ten thousand dollars; and being so found in arrear and indebted, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration thereof, undertook, and then and there faithfully promised said plaintiff, to pay him the said last-mentioned sum of money when he should be thereto afterwards requested. Yet neither said Williams, in his lifetime, or said defendant, his administratrix, as aforesaid, the said several sums of money herein mentioned, or any part thereof (although often thereto requested, to wit, on the day and year last aforesaid, at the county aforesaid, and often afterwards,) have not, nor have either of them paid, but the same or any part thereof, and both of them have hitherto wholly refused to pay, and still do refuse, to the damage of

the plaintiff in the sum of fifteen thousand dollars, current money, and therefore he brings suit, and so forth.

(Signed) W. J. STONE, JUN.,
For the Plaintiff.

Filed 4th Dec., 1858.

6 *Issue.*

38. Trials, Octo. '63. Docket entries showing issue joined. Stone, Brent & Merrick. 38. Ca. & M. Morgan, Bradley s'r. 1858, Oct. 16. Allison Nailor *vs.* Violet A. Williams, adm'x of W. H. Williams. Case nar non ass't and issue, stat. Docket 1865, Oct. 16th, note of issue.

Trial.

Proceedings before the Supreme Court of the District of Columbia, holding a special term, and Circuit Court for said District, commencing the first Tuesday, 5th day of February, 1867.

TUESDAY, *February* 5, 1867.

The court commenced the term by proclamation of the marshal, by order of Chief Justice Cartter, presiding.

THURSDAY, *March* 28, 1867,

The court resumed its session according to adjourment, Chief Justice Carter presiding.

Jury.

ALLISON NAYLOR, pl'ff,
vs.
VIOLET A. WILLIAMS, adm'x of William H. Williams, deft. } 38. Trials, October term, 1862. 439 Cal.

Come, as well the plaintiff, by his attorneys, Messrs. Brent & Merrick, as the defendant, by her attorneys, Messrs. Morgan
7 & Bradley, and a jury of good and lawful men of this district, to wit: Charles Gifford, Warner Lowe, John C. McKeldon, John Chapman, Silas H. Moore, John H. Goddard, Andrew Jackson, Thomas W. Miller, David Jackson, Thomas Goodrich, James F. Wollard, and John B. Wood, who, being sworn to try the issue above joined, are respited till the meeting of the court to-morrow.

SATURDAY, *March* 30, 1867,

The court resumed its session according to adjournment, Chief Justice Carter presiding.

Verdict.

ALLISON NAILOR, plaintiff,
vs.
VIOLET A. WILLIAMS, adm'x of William H. Williams, defendant. } 38. Trials, October term, 1862.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury, who were respited yesterday; and the said jury having received the instructions of the court, upon their oath say, they find the issue above joined in favor of the defendant.

MONDAY, *April* 1, 1867.

The court resumes its session according to adjournment, Chief Justice Carter presiding.

Motion for new trial.

ALLISON NAILOR, plaintiff,
vs.
VIOLET A. WILLIAMS, adm'x of William H. Williams, def't. } 38. Trials, October term, 1862.

8 The plaintiff moves the court to grant a new trial for the for the following reasons:

2. Because the verdict was against the evidence.
1. Because the verdict was against the law.
3. Because the court charged the jury erroneously in this: that the jury was told it was competent to allow the defendant to charge the costs and expenses of getting the negroes to Louisiana, whatever they might find that to be, whereas there was no evidence before the jury of the amount of such costs and expenses, or that it had not been paid equally by Davis and Williams at the time of the shipment of the slaves to the South prior to the assignment in 1847 by Davis to the plaintiff; and also that the court further erred in charging the jury that they might find that there was no notice to W. H. Williams of the assignment made by Davis to the plaintiff, whereas the notice was proved by two witness to have been duly served, and there was nothing in the case to neutralize the preponderance of proof on that point, or to negative the positive testimony of notice.

R. J. BRENT, *For Pl'ff.*

THURSDAY, *April* 11, 1867.

9 The court resumes its session according to adjournment. Chief Justice Carter presiding.

Exceptions.

ALLISON NAILOR, pl'ff,
vs.
VIOLET H. WILLIAMS, def't. } 38. Trials, October term, 1866.

The plaintiffs, by his attorney aforesaid, comes and files his ex-

ceptions to the rulings of the court on the trial, and to its instructions to the jury, and the same being signed and sealed are made part of the record.

In the Supreme Court of the District of Columbia.

Bill of exceptions.

ALLISON NAILOR, pl'ff,
v.
VIOLET H. WILLIAMS, adm'r of William H. Williams, def't.

At law. No. 38. Trials, October term, 1865.

On the trial of this case before the jury, the plaintiff, to maintain the issue on his part joined, gave evidence by competent witnesses tending to show that the paper marked A, (see it post, page 14,) was witnessed by one John Hands, who was produced and swore that he signed the paper as a witness to the signature of Thomas M. Davis, and that said Davis signed the same in his presence and delivered it to said plaintiff. The plaintiff then offered as a witness one Dickerson Naylor, by whom he gave evidence tending to show that the said assignment, paper marked A, was, in the latter part of the year 1847, shown by the plaintiff to the said intestate William H. Williams, and also after reading it promised plaintiff that when the claim for the negroes mentioned therein was allowed, and the money obtained for them, he, the plaintiff, should receive one-half thereof by virtue of said assignment.

The plaintiff thereupon closed the examination of the said witness, whereupon the defendant on cross-examination of the same, asked the said witness, "Was not the said plaintiff, at the date of said assignment, engaged in trading negroes?" To which said question the plaintiff then and there objected, but the court overrulled said objection, and required the witness to answer the same, to which the plaintiff then and there excepted, and prays the court to sign and seal this his first bill of exceptions.

Given under my hand and seal this 29th day of March, 1867, which is accordingly done.

[SEAL.] (Signed) D. K. CARTTER,
Chief Justice.

Plaintiff's 2nd exception.

After the evidence and ruling in the aforegoing exception, made a part hereof, the defendant asked the said witness, Dickerson Nailor, "Was not he, the said witness, at the date of said assignment, engaged in aiding the plaintiff in trading in negroes?" To which question the plaintiff then and there objected, but the court overrulled the objection and required the witness to answer the same, to which said ruling the plaintiff then and there excepted, and prays the court to sign and seal this his second bill of exceptions, this 29th day of March, 1867, which is accordingly done.

[SEAL.] (Signed) D. K. CARTTER,
Chief Justice.

After the evidence and rulings in the aforesaid exceptions, made a part hereof, the plaintiff offered testimony, tending to shew
13 that the said negroes and their issue had been returned to said William H. Williams, sixteen in number, that the same had been sold by the said Williams for the sum of twenty thousand dollars; that the interest of said Davis, assignor of plaintiff, arise from his purchasing jointly the said negroes with said William H. Williams, from the State of Virginia, where they were held as convicts of crime; that the said William H. Williams took the said negroes to the State of Louisiana, where they were seized by the State authorities, but were never confiscated. And then read in evidence the following record. (See it post, 19 et. seg.)

And then read in evidence the following act of the legislature of La.:

[Here set out the act.]

And that under said act the said negroes were delivered to said Wm. H. Williams, and sold for the amount aforesaid.

The aforegoing testimony was offered on the trial aforesaid.

Witness my hand and seal this 29th day of March, 1867.

[SEAL.] D. K. CARTTER,
Chief Justice.

14 (A.)

WASHINGTON CITY, *November 12th*, 1847.

I do hereby assign all my right, title, claim, and interest to Allison Nailor, for value received of him, to the following negroes purchased by William H. Williams and Thomas Davis, of the State of Virginia, in the year 1840.

1, Albert, aged 24 years; 2, Stephen, aged 23 years; 3, John Johnson, aged 23 years; 4, Harrison Reid, aged 20 years; 5, Arthur, aged 18 years, (sold by J. Davis at $800;) 6, James, aged 23 years; 7, Jack Johnson, aged 33 years; 8, John Carter, aged 42 years; 9, Henry Godderd, aged 21 years; 10, Jacob, aged 43 years; 11, Nelson, aged 45 years; 12, Landon Carter, aged 35 years; 13, Ned, aged 25 years; 14, Alfred, aged 29 years; 15, John, aged 19 years; 16, George, aged 35 years; 17, Henry, aged 21 years; 18, Jim Brown, aged 23 years; 19, John Winking, aged 34 years; 20, Nelson, aged 30 years; 21, Phil Harris, aged 36 years; 22, Thos. Jewell, aged 24 years; 23, Jarratt, aged 25 years; 24, Nancy Custis, aged 20 years; 25, Malinda, aged 20 years; 26, Nancy, aged 38 years; 27, Charlotte, aged 16 years. Costing $12,500, as witness my hand and seal this day and date above mentioned.

[SEAL.] THOMAS N. DAVIS.

Witness:

JNO. HANDS, Jr.

15 Cir. Court D. C.

ALLISON NAILOR
vs.
VIOLET A. WILLIAMS, adm'tx of Williams.

It is hereby agreed that the said parties respectively may take any deposition before Arthur Lavoier, justice of the peace, New Orleans, upon notice to the attorney of the said parties respectively, notice to the defendant to be directed to her attorney, Thomas T. Semmes, esq., New Orleans. Such depositions to be subject to exception per matters of substance. All matters of form being hereby waived.

W. J. STONE, JR., *for P'll.*
CARLISLE & MAURY,
Att'ys for Defendant.

Washington, D. C., 26th March, 1860.

16
17 Supreme Court of the State of Louisiana.

THE STATE OF LOUISIANA
vs.
WILLIAM H. WILLIAMS.

Copy of transcript.
Cost of copy, $17 40.

18
19 Supreme Court, eastern district.

UNITED STATES OF AMERICA, *State of Louisiana*:

Copy of the transcript of the proceedings had in the Criminal Court of the first judicial district, parish of Orleans, in a certain suit, wherein the State of Louisiana was plaintiff and appellee, and William H. Williams was defendant and appellant.

Criminal Court of the First district, parish of Orleans.

Extract of the minutes

THE STATE OF LOUISIANA:

1°. The grand jury came into court, and being called, presented the following bill of indictment, to wit:

Importing and bringing criminal slaves into the State.

THE STATE
vs.
WILLIAM H. WILLIAMS.

N. ORLEANS, 17*th*, 1841.

A true bill.
(Signed) A. LEDOUX, *Foreman.*

Criminal Court of the first judicial district, parish of Orleans.

Indictment.

THE STATE OF LOUISIANA:

20 2. The grand jury of the State of Louisiana, duly empannelled and sworn for the parishes of Plaquemines, Jefferson, and Orleans, upon their oath present that William H. Williams, late of the city of New Orleans, in the parish of Orleans, on the first day of November, in the year of our Lord one thousand eight hundred and forty, with force and arms in the parish of Orleans, aforesaid, and within the jurisdiction of the Criminal Court of the first district, to wit, the first judicial district of the State of Louisiana, did import and bring into this State, to wit, the State of Louisiana, twenty-four slaves, named Jane, Nancy, John, John, Landon, John, Thomas, Phil, John, Nelson, Henry, Harrison, John, Malinda, James, Nelson, Charlotte, George, Arena, Jim, Alfred, Henry, Nan, and Ned, which slaves then and there had been convicted of the crimes of murder, burglary, rape, arson, manslaughter, attempt to murder, and having raised and attempted to raise an insurrection among the slaves in one of the States of the Union, to wit, the State of Virginia, he the said William H. Williams, then and there well knowing that the said slaves had been convicted in the State of Virginia

21 aforesaid, of the above-mentioned crimes, each as follows:

Jane, by the court of Spotsylvania, of arson; Nancy, by the court of Arromack, of arson; John, by the court of Hastings, for the borough of Norfolk, of burglary; John, by tha court of Jefferson county, of a rape; Landon, by the court of Prince William county, of arson; John, by the court of Spotsylvania, of an attempt to murder; Thomas, by the court of Buckingham, of murder; Phil, John, Nelson, Henry, and Harrison, by the court of Hastings, for the town of Fredericksburg, of burglary; John, by the court of Charles City county, of murder; Malinda, by the court of Southampton, of murder; James and Nelson, by the court of Rockbridge, of burglary; Charlotte, by the court of Clark couuty, of arson; George, by the court of King and Queen, of burglary; Anna and Jim, by the court of Greenville, of an attempt to murder; Alfred, by the court of Fairfax, of conspiracy and insurrection; Henry, by the court of Loudoun county, of burglary; Nan, by the court of Patrick county, of an attempt to murder; and Ned, by the court of Lancaster, of burglary, contrary to the form of the statute of the State of

22 Louisiana, in such [such] case made and provided, and against the peace and dignity of the same.

(Signed) T. W. COLLINS,
District Attorney.

Which is endorsed as follows, to wit: 7,487. Criminal Court *vs.* William H. Williams. Importing and bringing criminal slaves into the State. A true bill. N. Orleans, 17th Feb'y, 1841. Signed A.

Ledoux, foreman. Arraigned, and pleaded not guilty. New Orleans, 27th February, 1841. Signed Alf. Rousseau, dep'y clerk. Guilty. New Orleans, 1 May, 1841. Signed G. M. Lee, foreman. Sentenced to twelve thousand dollars fine, to the forfeiture of the twenty-four slaves, and to pay the costs. N. O., 24th July, 1841. Signed Alf. Rousseau, d'y clerk.

In the Criminal Court of the first district.

Agreement.

THE STATE OF LOUISIANA
vs.
WILLIAM H. WILLIAMS.

3d. In this case the following statements of facts is agreed to by the defendant, William H. Williams, and the attorney general, which statement is to be used on the trial of the case.

23 The slaves mentioned in the indictment, and now confined in the prison of this city, were all duly and legally convicted of the crimes mentioned in the indictment by courts of competent jurisdiction, in the State of Virginia; and said slaves were all sentenced to death for said crimes, by said courts, in said State, but were reprieved by the governor of Virginia, for sale and transportation beyond the limits of the United States, according to the laws of Virginia.

The defendant, William H. Williams, entered into bond, conditioned that said slaves should be transported out of the limits of the United States. The identity of the slaves mentioned in the indictment, and those put in prison at the inception of this prosecution, is admitted. It is likewise admitted that the said slaves were the property and were in the charge of said William H. Williams when they arrived in the State of Louisiana at time stated in the indictment, and that he arrived with them here from the State of Virginia by sea to Mobile, and by internal navigation from there to New Orleans.

24 It is also agreed that the omission of the month in the finding of the grand jury of the indictment in this case shall be corrected by inserting the word "February" between the word "17th" and the figures "1841." The printed statute books of Virginia may be read as the law of Virginia on either side if necessary.

(Signed) JOHN R. GRYMES, *For Def't.*
(Signed) WILLIAM H. WILLIAMS.
(Signed) C. ROSELIUS, *Attorney General.*

Which is endorsed as follows : 7,487, Criminal Court. The State of Louisiana vs. William H. Williams. Statement of facts. Filed, New Orleans, February 27, 1861.

(Signed.) ALF. ROUSSEAU, *D'y Clerk.*

Extract of the minutes.

THE STATE
vs.
WILLIAM H. WILLIAMS. } Importing and bringing criminal slaves into the State.

4. The accused, William H. Williams, appeared this day in court upon his recognizance, and being arranged on the above charge of "importing and bringing criminal slaves into the State," pleaded not guilty; and said Wm. H. Williams being ready for trial, the following jurors were called to the book and sworn to as such in this case, to wit:

25 1. L Chittenden, foreman; 2. Emile Faures; 3. B. Louvig; 4. J. I. W. Plauche; 5. Jose Paturzo; 6. J. R. Saillard; 7. Richard Bein; 8. Louis Cormier; 9. J. L. Sollee; 10. F. M. Veld; 11. Henry Willoz; 12. J. W. Justamond.

Witnesses for the State, William Freret, George Y. Bright, L. H. Sere.

Witnesses for the accused, W. Duval, Samuel H. Page, Frederick Bertin, Christian Myers, S. F. Slatter, S. Bennett, and W. S. Upton.

The evidence being summed up the jury received a charge from the court and retired to consider of their verdict; and it now being half-past six o'clock p. m., and the sheriff being ordered to bring the jury into court, which being done, the court demanded of their foreman whether there was any hope of their agreeing on their verdict, and all and each of them having answered in the negative to this question the judge came to the conclusion that inasmuch as it was impossible for the jury to agree there was a necessity for disolving them; whereupon the prisoner was informed of this conclusion on the part of the court, and asked to declare postively whether

26. he had any objections that the jury should be discharged from the further consideration of said case, and the said William H. Williams having voluntarily, freely, and openly given his full and positive assent to the said discharge, it is therefore ordered that said jury be discharged from the further consideration of the case, and that said William H. Williams be discharged upon his recognizance.

Extract of the minutes.

THE STATE
vs.
WILLIAM H. WILLIAMS. } Importing and bringing criminal slaves into the State.

5. The accused, William H. Williams, appeared this day in court upon his recognizance to be tried upon the above charge of "importing and bringing criminal slaves into the State," and said William H. Williams being ready for his trial, the following jurors were called to the book and sworn to serve as such is this case, viz:

1. Levi Hubble, foreman; 2. I. Petier; 3. Pablo Saar; 4. I. A.

Smith; 5. A. Fisk; 6. F. Rapp; 7. W. B. Johnson; 8. Thomas Fellows; 9. T. Clark; 10. I. Boize; 11. I. N. Rieulfi; 12. E. Charpy.

27 Witnesses for the State, U. Bouligny jr., L. H. Sere.

Witnesses for the accused, Samuel H. Page, S. H. Slatter, George Y. Bright, William Freret, Christian Myers, F. Burtens, J. Bennett, James W. Zacharie, S. W. Upton.

The evidence being summed up the jury received a charge from the court and retired to consider of their verdict; and it now being half-past six o'clock p. m., and the sheriff being ordered to demand of the jury whether there was any hope of their agreeing on their verdict, and the answer being in the negative, ordered by the court that the jury remain under the charge of the sheriff, and that said William H. Williams be discharged upon his recognizance.

Extract of the minutes.

THE STATE *vs.* WILLIAM H. WILLIAMS. } Importing and bringing criminal slaves into the State.

6. The accused, William H. Williams, being again in court, the jury sworn to try the above case, who were left in the charge of the sheriff, came in court, and it appearing that there is no probability

27 that they will agree upon their verdict, on motion of the district attorney, and with the consent of John R. Grymes, esq., of counsel for the accused, ordered by the court that the jury be discharged from the further consideration of this case. Ordered, moreover, that said William H. Williams be discharged on his recognizance.

Extract of the minutes.

THE STATE *vs.* WILLIAM H. WILLIAMS. } Importing and bringing criminal slaves into the State.

7. The accused, William H. Williams, appeared this day in court upon his recognizance, to be tried on a charge of importing and bringing criminal slaves into the State, and being ready for his trial, the following jurors were called to the book and sworn to serve as such in this case, to wit :

1. J Charles Maron; 2. W. C. Duncan; 3. John Cottle; 4. George M. Lee; J. A. Brand; 6. S. Audler; 7. E. E. Parker; 8. Justin Vairin; 9. J. B. Bailey; 10. N. Mangler; 11. Charles Wertholtz; 12. W. W. Caldwell.

28 Witnesses for the State, L. H. Sere, Ursin Bouligny.

Witnesses for the accused, Samuel H. Page, S. F. Slyther, Christian Myers,, Frederick Bartens.

Recorder, George T. Bright, S. W. Opton, S. Bennett.

The evidence being summoned up, and it now being three o'clock p. m., ordered by the court that the trial of this case be continued

until to-morrow morning at 10 o'clock in its actual progress and situation, and that said william H. Williams be discharged on his recognizance, he having previously given his free and unqualified assent to said measure.

Extract of the minutes.

THE STATE *vs.* WILLIAM H. WILLIAMS. } Importing and bringing criminal slaves into the State.

8. The accused, William H. Williams, appeared this day in court on his recognizance, and this case, which was adjourned over yesterday, came on again to day, the twelve jurors already sworn in this case being present. The trial proceeded. The argument being closed, both on behalf of the accused and on behalf of the State,
29 the jury received a charge from the court and retired to consider of their verdict. They afterwards came into court, and being called presented the following verdict, to wit:

"Guilty. N. Orleans, 1 May, 1841.
(Signed) G. M. LEE, *Foreman.*"

Whereupon, ordered by the court that said William H. Williams be discharged on his recognizance, and that said recognizance be continued until he be discharged by due course of law.

Extract of the minutes.

THE STATE *vs.* WILLIAM H. WILLIAMS. } Importing and bringing criminal slaves into the State.

9. On motion of John R. Grymes, esq., of counsel for defendant, ordered by the court that he have leave to file the following grounds in arrest of judgment, to wit:

Criminal Court.

THE STATE *vs.* WILLIAM H. WILLIAMS.

The defendant comes here into court and moves to arrest the judgment in the above case, and assigns for errors in the arrest of
30 said judgment the following:

1st. That the statute under which the indictment in this case is formed does not make the offence charged in the said indictment either a crime, misdemeanor, or offence; therefore the proceeding by way of indictment is erroneous and contrary to law, and no judgment can or ought to be pronounced on the verdict rendered, but proceedings and judgment arrested and the indictment quashed."

2d. "That the penalty imposed by the statute being only a pecuniary one, the remedy is is by a penal action to recover the penalty, which is purely a civil proceeding, and the Criminal Court is without any jurisdiction."

3d. No sentence can be passed by the Criminal Court, because the the language of the law is that the penalty imposed shall be recovered before any court of competent jurisdiction, and this court is incompe tent to pass or render a judgment for the recovery of money.

(Signed) JOHN R. GRYMES.
For Defendant.

31 *Extract of the minutes.*

THE STATE *vs.* WILLIAM H. WILLIAMS. } Importing and bringing slaves into the State.

10. John R. Grymes, esq., of counsel for defendant, proceeded to argue the motion in arrest of judgment, filed in this case on the fifth May, 1841. The court after hearing argument, both on behalf of the accused and on behalf of the State, overruled said motion.

Extract of the minutes.

THE STATE *vs.* WILLIAM H. WILLIAMS. } Importing and bringing criminal slaves into the State.

11. The accused, William H. Williams, appeared this day in court to receive the sentence of the law and the verdict of the jury, finding him guilty on the 1st May, 1841. of "importing and bringing criminal slaves into the State," and said William H. Williams being ready to receive the sentence of the law, and having nothing to offer in arrest of judgment, the court proceeded to pass the following sentence, to wit:

Whereas, William H. Williams stands convicted of having, contrary to and in violation of the provisions of the first section of an
32 act entitled "An act supplementary to an act concerning the introduction of certain slaves from any of the States or Territories of the United States of America," approved January the 29th, 1817, imported and brought into this State, to wit, the State of Louisiana, twenty-four slaves, named Jane, Nancy, John, John, Landon, John, Thomas, Phil, John, Nelson, Henry, Harrison, John, Malinda, James, Nelson, Charlotte, George, Arena, Jim, Alfred, Henry, Nan, and Ned, which slaves had been convicted of the crimes of murder, burglary, rape, arson, manslaughter, attempt to murder, and of having raised and attempted to raise an insurrection among the slaves, in one of the States of the Union, to wit, the State of Virginia, he the said William H. Williams, well knowing that the said slaves had been convicted of the above mentioned crimes in the said

State of Virginia, each as follows, to wit: Jane of arson; Nancy of arson; John of burglary; John of rape; Landon of arson; John of an attempt to murder; Thomas of murder; Phil, John, Nelson, Henry, and Harrison of burglary; John of murder; Malinda of murder;
33 James and Nelson of burglary; Charlotte of arson; George of burglary; Arena and Jim of an attempt to murder; Alfred of conspiracy and insurrection; Henry of burglary; Nan of an attempt to murder; and Ned of burglary.

And whereas there is no informer in the present case, this prosecution against the said William H. Williams having been instituted at the instance of, and upon an affidavit made before his honor the Mayor of this city of New Orleans, and Etienne Mazureau, esq., the then attorney general of the State of Louisiana, in his official capacity, and therefore the whole of the forfeiture and fine accrues to the said State:

It is hereby ordered, adjudged, and decreed, that the said twenty-four slaves so imported and brought into this State contrary to the above recited act, to wit: Jane, Nancy, John, John, Landon, John, Thomas, Phil, John, Nelson, Henry, Harrison, John, Malinda, James, Nelson, Charlotte, George, Arena, Jim, Alfred, Henry, Nan, and Ned, be, and they are hereby, all and each and every one of them, forfeited to the State of Louisiana, with the right and privilege
34 on the part of said State to cause the said twenty-four slaves above mentioned to be sold agreeably to law, that is to say, for cash, to the highest bidder, after fifteen days notice of the time and place of sale.

And it is furthermore hereby ordered, adjudged and decreed, that the said William H. Williams be, and he is hereby, fined in the sum of twelve thousand dollars, that is to say, in the sum of five hundred dollars for each and every of the above-mentioned twenty-four slaves, so brought and imported into this State in violation of the above quoted act, and that the said Wi liam H. Williams stand committed until the said fine and the costs of the prosecution be paid.

(Signed,) CANONGE, *Judge.*

Signed by his honor the judge on the 29th July, 1841.

Petition for an appeal.

Criminal Court.

THE STATE OF LOUISIANA
vs
WM. H. WILLIAMS.

To the hon'ble the Judge of the Criminal Court of the first district:

35 The petition of William H. Williams, the defendant in the above case, respectfully shows that he prays an appeal from the final judgment rendered against him in the above case to the

Supreme Court of the State, according to law, suspension in its effect on his giving the security required by law.

(Signed) JOHN R. GRYMES,
Of Counsel for petitioner.

Which is endorsed as follows, to wit: 7,487. Criminal Court. The State *vs.* William H. Williams. Importing and bringing criminal slaves into the State. An appeal is refused, this not being an appealable case. New Orleans, July the 24th, 1841. Signed, Canonge, judge.

Extract of the minutes.

THE STATE *vs.* WILLIAM H. WILLIAMS. } Importing and bringing criminal slaves into the State.

13. On motion of the District Attorney, ordered by the court that a firi facias be issued in this case against William H. Williams, against whom judgment was rendered on the 24th July, 1841, by this
36 hon'ble court, for the sum of twelve thousand dollars, together with the costs of the prosecution, and that said fieri facias be returnable on the third Monday of August, 1841.

The State of Louisiana, Criminal Court of the first district.—No. 185.

14.—*Fi. Fa.*

The State of Louisiana to the sheriff of the Criminal Court of New Orleans, greeting:

We command you that you demand from William H. Williams the sum of twelve thousand dollars, and also the sum of seventeen hundred and eighty-five dollars and thirty-one cents costs, which the State of Louisiana lately recovered by judgment of the Criminal Court of the first district; and if he will not pay the same in three days after demand, then that you cause the same to be made out of the personal estate of said William H. Williams, except slaves in your parish, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of the said William H. Williams, exclusive of slaves, cannot be found in your said parish, that then you cause the said sum to be made of the real estate
37 and slaves of the said William H. Williams in your said parish, whereof he was owner on the twenty-fourth day of July, 1841, last past, in whose hands soever the same may have come; and that you have those monies before our said court to render to the said State of Louisiana for the judgment aforesaid on the fourth Monday of August, 1841, next, together with this writ.

Witness the Honorable John F. Canonge, judge of the said court, the fifth day of August, in the year of our Lord one thousand eight hundred and forty-one, and in the sixty-sixth year of the independence of the United States.

[L. S.] (Signed) ALF. ROUSSEAU, *Dep. Clerk.*

Which is endorsed as follows, to wit: 7,487. Received New Orleans, 5th August, 1841, and the same day seized two slaves, named Albert and Stevens. No other property found. Rreturned New Orleans the 6th, 1841. Signed M'l Elliott, d'y sh'ff.

15.—*Extract of the Minutes.*

THE STATE *vs.* WILLIAM H. WILLIAMS. } Importing and bringing criminal slaves into the States.

The mandate or order of the Supreme Court having been served on the honorable the judge of this court, commanding him to grant and allow an appeal to the defendant in the above case, to the said Supreme Court, the said defendant this day appeared in court by John R. Grymes, his counsel, and prayed the said court to grant him the appeal in the said case, according to the mandate of the said Supreme Court in this behalf awarded, on his giving security according to law.

Whereupon the court did refuse to grant and allow the said appeal for the reasons, and on the grounds following, to wit:

Criminal Court of the first district.

THE STATE OF LOUISIANA *vs.* THE JUDGE OF THE CRIMINAL COURT OF THE first district in the matter of the State *vs.* William H. Williams.

The order, made by the Supreme Court of the State of
39 Louisiana in the matter of the State *vs.* William H. Williams, has been served upon me, the judge of the Criminal Court of the first judicial district.

While I profess and entertain the highest respect for the decrees of that tribunal, and for the character of each and every one of its members, still I am aware that there are duties resulting from the situation which I hold which are paramount to all personal consideration and must be performed, be the consequences what they may; and were I to obey a command, however respectable the source it might emanate from, without its being predicated upon and in conformity with the law which I am sworn to support; were I to suffer that any enroachment should be made upon the authority of the court over which I have the honor to preside by a power claiming supremacy, or assuming rights not expressly delegated to them by some legislative provision, I would from that moment consider myself unworthy of the eminent functions which the governor and senate of Louisiana have been pleased to entrust me with.

Deeply impressed with these, my solemn obligations, and
40 at the same time sensible that the decisions of a tribunal so justly renowned for its learning and wisdom as the Supreme Court is, are entitled to much respect, I have, with the most minute

Supreme Court of the State, according to law, suspension in its effect on his giving the security required by law.

(Signed) JOHN R. GRYMES,
Of Counsel for petitioner.

Which is endorsed as follows, to wit: 7,487. Criminal Court. The State *vs.* William H. Williams. Importing and bringing criminal slaves into the State. An appeal is refused, this not being an appealable case. New Orleans, July the 24th, 1841. Signed, Canonge, judge.

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37 and slaves of the said William H. Williams in your said parish, whereof he was owner on the twenty-fourth day of July, 1841, last past, in whose hands soever the same may have come; and that you have those monies before our said court to render to the said State of Louisiana for the judgment aforesaid on the fourth Monday of August, 1841, next, together with this writ.

Witness the Honorable John F. Canonge, judge of the said court, the fifth day of August, in the year of our Lord one thousand eight hundred and forty-one, and in the sixty-sixth year of the independence of the United States.

[L. S.] (Signed) ALF. ROUSSEAU, *Dep. Clerk.*

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Whereupon the court did refuse to grant and allow the said appeal for the reasons, and on the grounds following, to wit:

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THE STATE OF LOUISIANA *vs.* THE JUDGE OF THE CRIMINAL COURT OF THE first district in the matter of the State *vs.* William H. Williams.

The order, made by the Supreme Court of the State of
39 Louisiana in the matter of the State *vs.* William H. Williams, has been served upon me, the judge of the Criminal Court of the first judicial district.

While I profess and entertain the highest respect for the decrees of that tribunal, and for the character of each and every one of its members, still I am aware that there are duties resulting from the situation which I hold which are paramount to all personal consideration and must be performed, be the consequences what they may; and were I to obey a command, however respectable the source it might emanate from, without its being predicated upon and in conformity with the law which I am sworn to support; were I to suffer that any enroachment should be made upon the authority of the court over which I have the honor to preside by a power claiming supremacy, or assuming rights not expressly delegated to them by some legislative provision, I would from that moment consider myself unworthy of the eminent functions which the governor and senate of Louisiana have been pleased to entrust me with.

Deeply impressed with these, my solemn obligations, and
40 at the same time sensible that the decisions of a tribunal so justly renowned for its learning and wisdom as the Supreme Court is, are entitled to much respect, I have, with the most minute

attention, examined and weighed the order above alluded to, commanding me to grant an appeal in Williams' case, but still reserving to the attorney general, or any other person representing the State, the right to move for the dismissal of said appeal on the ground of want of jurisdiction, and I regret to say that I cannot obey it upon the following grounds, to wit:

Because mandamus being defined by the code of practice to be an order directed by a superior to an inferior court commanding that court to perform certain acts belonging to the place, duty or quality with which it is clothed, it follows, as a necessary consequence, that it is a condition sina qua, for the validity of a mandamus, that the court issuing it should be unequivocably the superior of the one to whom it is directed, and I cannot, nay, I ought not, in my official capacity, assent to a superiority which is not recognized by any statute.

41 Because the rule being served upon me to shew cause why a mandamus should not be granted, the attorney general appeared in my behalf, and stated the grounds upon which the appeal prayed had been denied by the judge of the Criminal Court, and whether those grounds were such as warranted the conclusions which I had come to or not. Still I humbly conceive no other decree or rule could at that stage of the proceedings be rendered or made by the Supreme Court, except one finally settling the point in dispute which had been brought and solemnly argued before them.

Because if it be contended that the case of the State *vs.* William H. Williams, wherein the rule was taken upon me, is a civil action, the defendant ought to have, from the inception of the same, declined the jurisdiction of the Criminal Court. If, on the contrary, it be conceded that it is a criminal prosecution the Supreme Court cannot, in the present state of our legislation, come to his relief or afford him any redress.

Because I know of no law which gives to the Supreme Court an appellate jurisdiction in cases like the one in which this order

42 was issued.

Because the Supreme Court themselves, while they undertake to exercise the right, do not even pretend to assert it in the very order in question; but, on the contrary, by reserving to the attorney general or any other person representing the State the right to move for the dismissal of the appeal on the ground of want of jurisdiction, leave it to be implied that they have not come to any conclusion upon that question, and that they might finally decide against the application, although they have made the rule absolute.

Because they have not assigned any reasons or quoted any law in support of the position which they have assumed.

Had they condescended to assign reasons to sustain their opinion, those reasons, I am sure, would have been such as to convince me that I erred when I refused the appeal prayed for, and I would unhesitatingly have yielded to their superior judgments. Had they quoted the statute which they rely upon, I would have candidly admitted that I was laboring under a mistake, when I contended that

there was no such law in existance, and the mandate would
43 have been obeyed. But no; after a solemn argument had before four of the honorable judges of the Supreme Court upon a rule to show cause why a mandamus should not be granted, an order is issued which proves conclusively that the question remains undecided, and which, with it, purports to be definitive and absolute, has evidently no other object but to have a new hearing of the matter before a full bench.

In the absence, therefore, of a better guide than my feeble reason, and in the entire ignorance in which I still remain of the existance of a law vesting the Supreme Court with the power, which they assume, I must, with due deference and respect, say that the opinion which I expressed at the time when I refused the application for an appeal remains unshaken, to wit: that no appeal lies, and that the Supreme Court have no appellate jurisdiction in the matter.

In conclusion I may be permitted to add, that if it be erroneous on my part to believe that the Supreme Court have no appellate jurisdiction in criminal cases, I am borne out in that belief by the very acts and proceedings of the legislature now in session, for it
44 is notrious, and the fact has been officially announced by the State Gazette, that they have now before them one or more bills intended, not to remodel, but actually to create a court of appeals in criminal matters.

I am aware that my refusal to comply with the requisitions of the mandate already mentioned, may give rise to a deplorable state of collision between the Supreme Court and the one of which I am the presiding judge, and I regret it most sincerely. But to obey an order unsupported by law, according to my honest conviction, would not only be an act of weakness on my part, but a violation of the oath of office which I have taken. It cannot be done.

Signed 7th February, 1842.

(Signed) CANONGE, *Judge.*

16. *Extract of the minutes.*

THE STATE *vs.* WILLIAM H. WILLIAMS. } Importing and bringing criminal slaves into the State.

The court ordered on this day an entry to be made on its minutes in the words and figures following, to wit:

45 Crriminal Court of the first district.

IN THE MATTER OF THE STATE *vs.* WILLIAM H. WILLIAMS.

THE STATE OF LOUISIANA, *City of New Orleans:*

I am informed that the Supreme Court of the State of Louisiana have issued an order, directed to the sheriff of the parish of Orleans,

commanding him to arrest and keep me in goal until the mandamus granted by them be obeyed. Being made sensible that, were the writ directed against me to be executed, and the judge of the Criminal Court of the first district to be dragged from his bench into the walls of a prison, it might have the effect of weakening to a certain extent the dignity and respect which it is indispensible that the tribunals of the country should be surrounded with, in order that the ends of justice may be promoted and its administration made efficient; conscious that the incarceration of the judge would stop the proceedings of this court and prevent that public business should be dispatched regularly and speedily; and furthermore, fearing
46 that a collision between the Supreme and the Criminal Courts, were it to last any length of time, might be productive of consequences calculated to create confusion, and eventually to bring our institutions into disrepute, I have determined to obey the mandamus of the Supreme Court and to grant an appeal in this case. But, while yielding to those important considerations, I come to the conclusion of complying with the requisitions of the said mandate, I owe it to myself, with due deference and respect, to repeat what I stated on a former occasion, that the opinion which I expressed when I refused the appeal remains unshaken, and although my mind has always been, and still is, open to conviction, yet I may be permitted to say that I have heard no reasons assigned, nor can I imagine any, that could drive me from the position which I have assumed as to the point of law, with reference to the appellate jurisdiction of the Supreme Court in criminal matters. Let the appeal be granted in conformity with the order of the Supreme Court.

47 17. *Petition.*

To the honorable J. F. CANONGE, judge of the Criminal Court of New Orleans.

The petition of William H. Williams shows that he is informed and believes there is error in the judgment rendered against him by this court in the case of this State against this petitioner; wherefore he prays that an appeal (devolutive) may be granted him, on his giving bond according to law.

(Signed) R. HUNT, *for Def't.*

18. *Order.*

In conformity with the mandate of the Supreme Court, an appeal is hereby granted upon the appellant giving bond in the sum of three thousand dollars, with Jas. W. Zacharie as security, conditioned as the law directs, said appeal to be returnable at the Supreme Court on the first Monday of March next.

New Orleans, February the 12th, 1842.

(Signed) CANONGE, *Judge.*

Which is endorsed as follows, to wit: 7,487. The State *vs.* William H. Williams. Importing and bringing criminal slaves into the State. Filed New Orleans, 12th February, 1842. Signed Alf. Rousseau, d'y clerk.

48 19. *Extract of the minutes.*

THE STATE *vs.* WILLIAM H. WILLIAMS. } Importing and bringing criminal slaves into this State.

In conformity with the mandate of the Supreme Court, an appeal is hereby granted in this case upon the appellant giving bond in the sum of three thousand dollars, with James W. Zacharie as security, conditioned as the law directs, said appeal to be returnable at the Supreme Court on the first Monday in March next.

20°. *Bond.*

Know all men by these presents that we, William H. Williams and James W. Zacharie, are held and firmly bound unto the State of Louisiana, executors, administrators, and assigns, in the sum of three thousand dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated in the city of New Orleans on this twenty-third day of February, in the year of our Lord one thousand eight hundred and forty-two.

Whereas the above bounden William H. Williams this day
49 filed a petition of appeal from a final judgment rendered against him in the suit of the State of Louisiana in the Criminal Court of the first district, on the twenty-fourth day of July, 1841:

Now, the condition of the above obligation is such, that the above bound William H. Williams shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise, that the said James W. Zacharie, his surety, shall be liable in his place.

[L. S.] (Signed) WM. H. WILLIAMS.
[L. S.] (Signed) J. W. ZACHARIE.

Signed, sealed, and delivered in presence of—
(Signed) ALF. ROUSSEAU,
D'y Clerk Criminal Court 1st Dist.

Criminal Court of the first district.

Clerk's Certificate.

STATE OF LOUISIANA:

I do hereby certify that the foregoing twenty-one pages do contain a transcript of all the proceedings, as well as of all the docu-
50 ments, filed in the case of the State of Louisiana *vs.* William H. Williams, instituted in this court and now on the records thereof, under No. 7,487.

In testimony whereof, I have hereunto set my hand and affixed the seal of the aforesaid Criminal Court of the first district, at the city of New Orleans, this tenth day of March, in the year of our Lord

one thousand eight hundred and forty-two, and the sixty-sixth of the independence of the United States of America.

[L. S.] (Signed) ALF. ROUSSEAU,
D'y Clerk.

Judge's certificate.

I do hereby certify the foregoing transcript of the records of the case therein mentioned, do contain all the documents and proceedings had in said case before said Criminal Court of the first district.

New Orleans, 11th March, 1842.

(Signed) CANONGE, *Judge.*

51 Supreme Court of the State of Louisiana.

Proceedings in the Supreme Court.—Extract from the minutes.—Decree of Supreme Court.

The court met Tuesday, July 5th, 1842. Present, their honors F. X. Martin, A. Morphy, E. Simon, and Rice Garland; his honor judge Ballard is absent, on account of indisposition.

Appeal from the Criminal Court of the first district.

THE STATE OF LOUISIANA
vs.
WILLIAM H. WILLIAMS. } 4,671.

It is ordered, adjudged, and decreed that the judgment of the Criminal Court be annulled and reversed, and this cause dismissed, without prejudice to the rights of the State to proceed according to law to recover the fine imposed by the statute and the forfeiture of the slaves alleged to have been illegally introduced into the State.

52 Supreme Court of the State of Louisiana.

Extract from the minutes.—Decree on rehearing.

The court met Monday, April 8th, 1841. Present, their honors F. X. Martin, H'y A. Ballard, A. Morphy, E. Simon, and Rice Garland.

Appeal from the criminal court.

THE STATE, app'ee,
vs.
WILLIAM H. WILLIAMS, app't. } 4,671.

On a rehearing it is ordered, adjudged, and decreed that this appeal be dismissed, with costs.

Supreme Court, eastern district State of Louisiana.

UNITED STATES OF AMERICA:

I, Eugene Lasere, clerk of the Supreme Court of the State of Louisiana for the eastern district, do hereby certify that the forego-

ing twenty-eight pages contain a true copy of the transcript of the proceedings had in Criminal Court of the first judicial district, parish of Orleans, in a certain suit wherein the State of Louisiana
53 was plaintiff and William H. Williams was defendant; and also of two decrees (extracts from minutes) of this Supreme Court on the appeal taken by said Wm. H. Williams, which appeal is now on the files thereof, under No. 4,671.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this day of February, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-fourth year of the independence of the United States of America.

[SEAL.] (Signed) EUGENE LASERE, *Clerk*.

Supreme Court, eastern district State of Louisiana.

UNITED STATES OF AMERICA:

I, Edwin T. Merrick, chief justice of the Supreme Court of the State of Louisiana, do hereby certify that Eugene Lasere is clerk of the Supreme Court for the eastern district; that the signature
54 of Eugene Lasere to the foregoing certificate is in the proper handwriting of him, the said clerk; that the certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this day of February, in the year of our Lord one thousand eight hundred and sixty.

[SEAL.] (Signed) EDWIN T. MERRICK.

Proceedings before the Supreme Court of the District of Columbia in general term, commencing the first Monday (6th day) of May, 1867.—Final judg't.

ALLISON NAILOR, plaintiff,
v.
VIOLET A. WILLIAMS, adm'rx of WILLIAM H. Williams, def't. } 38 trials; Oct., 1862.

WEDNESDAY, *May* 8, 1867.

Come here now the said parties, by their said attorneys, and after argument of the matters assigned for error by the plaintiff, because it seems to the court that there is no error in the proceedings
55 of the Circuit Court, the plaintiff's motion for a new trial is overruled; and thereupon it is considered by the court that the plaintiff take nothing by his suit, and that the defendant go thereof, without day, and recover against the plaintiff $38 20-100, for the cost of her defence, and that she have execution thereof.

Prayer for writ of error

Whereupon the plaintiff prays a writ of error in the above cause to the Supreme Court of the United States.

IN THE SUPREME COURT OF THE ~~DISTRICT OF COLUMBIA.~~ United States

U. S. Supreme Court, December Term, 1868.

NAILOR *vs.* WILLIAMS, *Adm. of Williams.*

Brief of Plaintiff in error.

This suit was brought on the 14*th June*, 1858.

The narr is in indebitatus assumpsit, and upon an account stated, and the general issue was relied on. Record, (page 3 and 4.)

The verdict and judgment being for the defendant, (pages 5 and 23,) this writ of error brings up the plaintiff's exceptions.

The first exception, (page 6,) sets forth a written assignment, dated Nov. 12, 1847, from one Davis to the plaintiff, of all his interest in twenty-seven negroes purchased by Davis and the defendant's intestate from the State of Virginia in 1840, (see page 7.)

The plaintiff having proved the execution and delivery of said assignment then proved by Dickinson Nailor, that said agreement was shown by the plaintiff to the defendant's intestate in the latter part of 1847, when he promised to pay to the plaintiff one half of the money he should receive for said negroes when the claim for said negroes was allowed.

On cross-examination of said witness who had merely proved in chief the notice of the assignment and the promise of Williams, the defendant proposed to inquire whether the plaintiff "was not at the date of said assignment engaged in trading negroes," to which the plaintiff objected, and the court having overruled the objection and allowed the enquiry to be made, the plaintiff excepted.

Nothing could be more irrelevant than this general enquiry of the witness.

At the date of the transaction, the buying and selling of slaves as chattels was lawful, and the enquiry did not propose to connect itself with the consideration of the assignment from Davis to Nailor in any way or with any matter testified to in chief. The only tendency and object of the enquiry was to excite in 1867, the prejudices of the jury against a plaintiff who, twenty years before, might have dealt in slave property.

The same objections exist with increased force to a similar enquiry regarding the business of the witness and his aiding the plaintiff in negro trading, and which constitutes the second exception. The attempt was virtually, to impeach the credibility of the witness by a collateral enquiry into his antecedents twenty years ago in matters irrelevant to any legitimate or recognized mode of impeaching a witness in a court of justice.

The certificate of facts signed by the judge shows in substance, that Williams & Davis had purchased in 1840, from the State of Virginia, 16 negroes who had been convicted of crimes and sold under judicial sentence; that Williams took said negroes to Louisiana for sale, where they were seized by the State officers, and Williams indicted in 1841. Record, (page 7.)

Williams being convicted he appealed, and his appeal was dismissed. Record, (page 22.)

The negroes never were confiscated, but returned to Williams under a *special* act, and sold by him for $20,000. Record, (page 7.) See the special act of Louisiana passed in 1852, p. 186.)

It is submitted that the Court erred in allowing the first question to be asked, because,

1st. It was irrelevant, and if so, it was error to admit it. 9 Gill, 258.

Davis was the debtor of Nailor; and, in order to secure this indebtedness, assigned his interest in these negroes as collateral security; and the sole questions before the court and jury were: Had Williams notice of this assignment? And did he promise as above stated? And did he receive the money? These facts ase not in the slightest manner affected by the business of Nailor, which can throw no light upon the issues. The general practice or business of a plaintiff is not admissible in evidence, as ruled by this court in the case of Thompson *vs.* Bowie, 4 Wall, 472.

2d. It was new matter, not responsive to the examination in chief; and notwithstanding it may have been relevant, it could not have been asked on cross-examination. The defendant, if it was relevant, should have called the witness himself when he came to make his defence.—*The Philadelphia and Trenton Railroad Company vs. Stimpson*, 14 *Peters*, 461. Not being matter of cross-examination, the question was a leading one, as the witness was then in the attitude of being the defendant's own witness, nor do we consider this case as prejudiced by the ruling of this court in Johnston *vs.* Jones. 1 Black, 225. On the contrary, it is there held, that if the question is irrelevant it is inadmissible.

On either of these grounds the question was inadmissible, and, in as much as its evident effect was to raise a prejudice against the plaintiff, he is entitled to a new trial. The well settled rule is, that a party is entitled to a reversal if illegal evidence was admitted calculated to prejudice his case.

The second exception is equally well taken, because,

1st. It is not admissible to impeach the credit or respectability of a witness by interrogating him as to the character of his business, when that business has no reference to the subject matter of the suit, and can in no manner elucidate the issue.—1 *Greenleaf on Evidence*, *sec.* 458.

2d. That, even if such evidence is admissible, it should have been confined to the business carried on by the witness at the time of the trial, and not extend back some ten years, the date of the assignment.—1 *Greenleaf on Evidence*, *sec.* 459.

3d For the reasons set forth by us in considering the 1st exception.

We think that there were other exceptions—if so, they are lost or mislaid, and we are confined to these two.

BRENT & PHILLIPS,
For Plaintiff in Error.

In the Supreme Court of the United States.

DECEMBER TERM,—1868.

ALLISON NAILOR
vs.
VIOLA A. WILLIAMS, *Adm'x., of* WILLIAM W. WILLIAMS. } No. 157.

This case comes, on a writ of error from the Supreme Court of the District of Columbia.

It is an action of assumpsit brought by Nailor to recover damages for goods, wares, &c., sold and delivered; for work and labor; money had and received; money paid, laid out and expended; and an account stated; and the damages laid at $15,000. Non assumpsit was pleaded and issue joined.

On the trial the plaintiff read in evidence a paper signed by Thomas N. Davis, (p. 7,) being an assignment by Davis to the plaintiff of all his right, title, claim, and interest to the negroes whose names are mentioned in the assignment. To prove the execution of this paper he produced a witness named John Hands; and then produced a witness named Dickerson Nailor, who testified that the said paper was, in the latter part of the year 1867 shown by the plaintiff to the intestate Williams, and Williams, after reading it, said that when the claim for the negroes therein named was allowed, and the money obtained for them, he (the plaintiff) should receive one half thereof by virtue of said assignment. The first witness on *cross-examination* was asked: "Was not the said plaintiff, at the date of said assignment, engaged in trading in negroes?" Objected to, and objection overruled; and this is the ground of the first exception.

The next witness was asked on cross-eqamination: "Was not he (the said witness) at the date of the said assignment engaged in aiding the plaintiff in trading in negroes?" Objected to—objection overruled; and this constitutes the second and only remaining exception.

At page 9 of the record will be found an indictment found by the grand jury for the parishes of Plaquemines, Jefferson, and Orleans against the said Williams for importing into that State the several negroes named in the bill of sale or assignment from Davis to Nailor, and that the said slaves respectively had been convicted of murder, burglary, rape, arson, manslaughter, attempt to murder, and having attempted to raise an insurrection among the slaves in the State of Virginia.

At p. 10 is an agreement of facts made by Williams, in which the charge thus made is admitted to be true, except as to the bringing and importing criminal slaves into the State. As to this, at p. 11, he plead not guilty.

A jury was empanelled, and being unable to agree, and with the consent of Williams they were discharged.

Another jury was impanelled, failed to agree, and was in like manner discharged.

A third jury was sworn, and found him "guilty." (p. 13.) A motion in arrest of judgment was made and overruled, (p. 14,) and judgment entered, that the slaves be sold and Williams pay a fine of $12,000.

An appeal was prayed to the Supreme Court of Louisiana and finally allowed, (p. 21,) and the appeal was dismissed. (p. 22.)

This is the substance of the record, and is stated that this Court may see the nature of the whole case, and that the questions objected to were germain at least, to the subject matter of the suit.

There is nothing to show to what else the witnesses testified; nor is it material.

The question of the *discretion* of the court below:

To permit the enquiries, is supposed to have been fully stated in Johnston v. Jones and al, 1 Black, 226, and that under the ruling of this Court in that case, there is no ground for either of these exceptions.

BRADLEY & CARLISLE,

For Defendant in Error.